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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,166	12/14/2001	Richard L. Underhill	KCC 4758; KC #15,646A	5860

321 7590 11/26/2003

SENNIGER POWERS LEAVITT AND ROEDEL  
ONE METROPOLITAN SQUARE  
16TH FLOOR  
ST LOUIS, MO 63102

EXAMINER

REICHLE, KARIN M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 11/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/017,166

**Applicant(s)**

UNDERHILL ET AL.

**Examiner**

Karin M. Reichle

**Art Unit**

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 4-8, 10-18, 22-26 and 28-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 9, 19-21 and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of the Group I invention and the species of Figure 5 in Paper No. 3 is acknowledged.
2. Claims 37-42 and 4-8, 10-18, 22-26, 28-36 and 43-49 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, respectively, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 3.

In addition to claims 11-18, and 28-49, claims 4-8, 10 and 22-26 are also withdrawn because the elected species of Figure 5 does not show such structure, i.e. fibers, superabsorbents, etc.

### *Specification*

### *Drawings*

3. The drawings are objected to because in Figure 5, 151 should be 155. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Description*

4. The abstract of the disclosure is objected to because the legal terminology, i.e. "comprises" on line 7, should be avoided. Correction is required. See MPEP § 608.01(b).

5. The use of the trademark LYCRA(R)(pages 12 and 18), AHCOVEL(R)(page 15), GLUCOPAN(R)(page 15) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Trademarks should be in all capital letters or accompanied by the trademark symbol but not both.

6. The disclosure is objected to because of the following informalities: On page 23, line 13, "191" should be --291--.

Appropriate correction is required.

### ***Claim Language Interpretation***

7. "Liquid impermeable" and "liquid permeable" are defined as set forth on page 6, lines 15-21.

### ***Claim Objections***

8. Claims 1-3, 9, 19-21 and 27 are objected to because of the following informalities: in claim 1, line 4 and claim 19, line 11, "the wearer's" should be --a wearer's--. In claims 2-3 and 9, line 1, "A" should be --The--. In claims 20-21 and 27, line 1, "Training" should be --The training--. In claim 9, line 3, "the total" should be --a total--. In claim 21, line 4 and claim 27, line 2, "central" should be deleted. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-3, 9, 19-21 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Berg '023.

See, e.g., Berg at Figures 1-3, the first sentence of the abstract, col. 1, lines 13-21, col. 2, lines 47-53 and 61-64, col. 11, lines 9-11, col. 16, lines 50-63, col. 20, lines 18-40, col. 19, lines 47-50, the paragraph bridging cols. 20-21, col. 22, lines 21-49 and 65 et seq, col. 23, lines 11-16 and col. 25, lines 3-18. Therefore the Berg patent teaches an article 20 or training pants, see col. 11, line 11, having a liner 38, a cover 40, a posterior region, an anterior region, a crotch region, a waist opening and leg openings, see, e.g., paragraph bridging cols. 4-5, an absorbent body 42, which body has a first zone 56, a second zone(s) 58, see Figures 1-3, the first zone having a lower absorbent capacity per unit weight than the second zone, see portions cited supra. The article is capable of facilitating flow of liquid from the first zone back through the liner creating a wet feeling, see col. 20, lines 18-31. The Berg patent therefore teaches at least the claimed structure. Applicants also claim the claimed structure being capable of liquid flow back indicating to the wearer the release of liquid into the article. If not already taught explicitly in the portions of Berg cited supra, there is sufficient factual evidence for one to conclude that the similar structure of Berg would also be inherently capable of indicating to the wearer the release

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of liquid into the article due to liquid flow back. With regard to claims 3 and 21, see Figures 2-3. It is noted that the claims do not require the pair of zones be discrete zones, i.e. the pair of zones can be connected with each other.


***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Rabin, Roman et al and Igaue et al references also teach various zones.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
November 21, 2003